



ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF  
ARIZONA-AMERICAN WATER COMPANY,  
AN ARIZONA CORPORATION, FOR A  
DETERMINATION OF THE CURRENT FAIR  
VALUE OF ITS UTILITY PLANT AND  
PROPERTY AND FOR INCREASES IN ITS  
RATES AND CHARGES BASED THEREON  
FOR UTILITY SERVICE BY ITS SUN CITY  
WATER DISTRICT

DOCKET NO. W-01303A-07-0209

TOWN OF YOUNGTOWN'S INITIAL  
CLOSING BRIEF

The Town of Youngtown (Town or Youngtown) submits this initial closing  
brief in accordance with the direction of Administrative Law Judge Jane Rodda.

**I. FIRE FLOW IS A MATTER OF HEALTH AND SAFETY**

Inadequate fire flow presents critical issues of public health and safety, as well  
as the disparate and unequal service within the Sun City Water District (District). The  
benefits to life and property to ratepayers and the public from adequate fire flow and properly  
spaced fire hydrants are uncontroverted.<sup>1</sup> The disparate and unequal fire flow conditions  
between portions of the District are also well documented and uncontroverted.<sup>2</sup> The Fire-flow  
Task Force, created in compliance with Arizona Corporation Commission (Commission)

<sup>1</sup> Transcript (Tr) Volume (Vol) 2, pp. 216-21, 252-54 (Deputy Chief Oleson); 274-76 (Mayor LeVault); 352  
(Mr. Cole); Vol 4, pp. 618, 630 (Ms. Diaz-Cortez).

<sup>2</sup> Ex BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Meeting Summary, Jan 18, 2005 ¶3; Tr Vol  
1, pp. 114, 197 (Mr. Gross)

1 Decision No. 67093, recommended a four year fire flow capital improvement plan (Patron  
2 Safety Plan) financed through a fire flow surcharge mechanism (FCRM) that will enable  
3 Arizona American Water Company (AAW) to provide fire flows and fire hydrants meeting  
4 the minimum levels recommended by the International Fire Code of 2003 (IFC) throughout  
5 the District.<sup>3</sup> All parties, except the Residential Utility Consumer Office (RUCO), support  
6 the Patron Safety Plan, including the FCRM.

7 Under these facts, the Commission has the authority and affirmative obligation  
8 to approve the Patron Safety Plan.

## 9 II. BACKGROUND – THE FIRE FLOW TASK FORCE

10 In defining public service corporations, the framers of the Arizona Constitution  
11 enumerated entities “furnishing water for irrigation, fire protection, or other public purposes.”  
12 Article 15, Section 2. (Emphasis added). While AAW may not be in the fire protection  
13 business, AAW furnishes water for fire protection purposes.<sup>4</sup> However, a portion of the  
14 District’s water system serving the District is incapable of sustaining fire flows at the  
15 minimum levels recommended under the IFC,<sup>5</sup> creating a risk to the public health and safety.

16 Concerned about the disparity in fire flows within the District, in 2004 the  
17 Commission ordered AAW to:

18 [F]orm a Fire-flow Task Force to be comprised of members  
19 including, but not limited to, a representative of the company’s  
20 Arizona management team, representatives from Youngtown and Sun  
21 City, a representative of the Sun City Taxpayers’ Association, a  
representative of the Recreation Centers of Sun City, and

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22 <sup>3</sup> The State of Arizona has adopted the IFC as the State Fire Code and, unless otherwise provided by law,  
23 requires any person residing, doing business, or who is physically present within the state of Arizona to comply  
with the provisions thereof. A.A.C. R4-36-201.

24 <sup>4</sup> The fire prevention business is different from furnishing water for fire prevention purposes. The former is not  
25 within the class of services subject to the Commission’s jurisdiction, while entities furnishing water for fire  
prevention are public service corporations. *Rural/Metro Corp. v. Ariz. Corp. Com’n*, 129 Ariz. 116, 629 P.2d  
83 (1981).

<sup>5</sup> 1,000 gpm for residential and 1,500 gpm for commercial for a two hour duration.

1 representatives from the fire departments serving Youngtown and  
2 Sun City. *The purpose of this Task Force shall be to determine if the*  
3 *water production capacity, storage capacity, water lines, water*  
4 *pressure, and fire hydrants of Youngtown and Sun City are sufficient*  
5 *to provide the fire protection capacity that is desired by each*  
6 *community.* (Emphasis added).<sup>6</sup>

7 AAW complied with the Commission's decision, forming a Fire-flow Task  
8 Force<sup>7</sup> and preparing and filing the Fire-flow Task Force Report in Docket No WS-01202A-  
9 02-0867, *et seq.* on or about May 25, 2005.

10 **III. THE PATRON SAFETY PLAN IS A TASK FORCE**  
11 **RECOMMENDATION RELATED TO SERVICE THROUGHOUT THE**  
12 **ENTIRE DISTRICT; NOT A YOUNGTOWN REQUEST**

13 The Task Force agreed fire flows equal to the IFC minimum standards of 1,000  
14 gpm - single family residential, 1,500 gpm - multi-family residential and 1,500 gpm - non-  
15 residential (all for a minimum two hour duration) should be available throughout the District.<sup>8</sup>

16 Brown & Caldwell modeled the District and confirmed that "most of the service  
17 area has flows greater than 1,500 gpm," but identified some areas with less than 1,000 gpm  
18 and two areas with flows of 500 gpm or less.<sup>9</sup> The fire hydrants are inadequately spaced in  
19 areas south of Grand Avenue, though adequately spaced in all areas north of Grand Avenue.<sup>10</sup>

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20 <sup>6</sup> Decision No. 67093, dated June 30, 2004 at pp. 59 - 60.

21 <sup>7</sup> The Sun City Fire-flow Task Force included representatives from the Town of Youngtown, the Sun City  
22 Taxpayers' Association, the Recreation Centers of Sun City, a Youngtown resident, the Sun City Homeowners  
23 Association, a Youngtown area senior citizen health care facility, the Condominium Owners Association, Inc.,  
24 the Sun City Fire Department and the City of Surprise Fire Department.

25 <sup>8</sup> Ex. BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Meeting Summary, Nov. 16, 2004, ¶ 2;  
Ex. KR-2 to Y-1 (prefiled Direct Testimony of Fire Marshal Ken Rice). In contrast, AAW requires 1,500 gpm  
for *new* residential and 3,000 gpm for *new* commercial. Ex. BKB-1 to A-9, Meeting Summary, Nov. 16, 2004,  
¶ 2.

<sup>9</sup> Ex. BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Meeting Summary, Jan 18, 2005, ¶3.

<sup>10</sup> *Id.*; Ex BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Meeting Summary, Dec. 13, 2004, ¶3.

To address that public safety service disparity, the Task Force recommended a Patron Safety Plan that prioritized construction over a four year period.<sup>11</sup>

The Plan is generally summarized as follows:<sup>12</sup>

YEAR	DESCRIPTION	COST
NOW	Sun City and Youngtown pressure reducing/pressure sustaining valve modifications	\$17,000
1	Youngtown neighborhood commercial -111 <sup>th</sup> Ave south of Youngtown Avenue; Youngtown residential; fire hydrants in Sun City and Youngtown installed on existing pipe	\$1,099,000
2	City of Peoria – Paradise Mobile Home Park; Sun City residential; Youngtown – 6” piping and fire hydrants	\$1,190,000
3	6” piping and fire hydrants – Sun City and Youngtown	\$1,278,000
4	6” piping and fire hydrants – Sun City and Youngtown; piping improvements – Youngtown commercial	\$1,534,000
<b>TOTAL</b>		<b>\$5,118,000</b>

Overall, there are ten distinct improvement projects throughout the District involved, including 44,133 feet of new main and 195 new fire hydrants throughout the District (listed by community as follows):<sup>13</sup>

- Sun City: 21,492 linear feet of main and 78 fire hydrants
- Youngtown: 21,391 linear feet of main and 117 fire hydrants
- Peoria: 1,250 linear feet of main

<sup>11</sup> Ex. BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Sun City Fire Flow Cost Summary of the Four Year Plan.

<sup>12</sup> Ex. BKB-1 to A-9 (prefiled Direct Testimony of Mr. Biesemeyer), Section III, p.4 with costs updated to reflect the rejoinder testimony of Joseph Gross. Ex. JEG-RJ1 to A-2 (prefiled Rejoinder Testimony of Joseph Gross).

<sup>13</sup> Ex. BKB-1 to A-9, Section III, p.4

1           “All Task Force members agreed that the plan was good, and encouraged  
2 Arizona American Water Company to set the goal of escalating the projects as much as  
3 possible without adding to the cost. They supported the need for the plan to be flexible,  
4 particularly in the later years of implementation. They stressed the importance of keeping the  
5 customers informed throughout the process.”<sup>14</sup>

6           AAW conducted community information forums regarding the Patron Safety  
7 Plan and mailed a survey to all of its customers of record. 3,247 responses were returned; an  
8 excellent response rate for this type of survey.<sup>15</sup> 59% of the respondents supported fire flow  
9 improvements<sup>16</sup> and 51% supported including the cost in water rates.<sup>17</sup>

#### 10           **IV. THE COMMISSION IS OBLIGATED TO PROTECT THE** 11           **PUBLIC’S HEALTH AND SAFETY**

12           The Commission’s authority to regulate fire flow is significant.

13           • The Commission has full power to, and “***shall \* \* \**** make and enforce  
14 reasonable rules, regulations and orders *for the convenience, comfort, and safety,*  
15 *and the preservation of the health,* of the employees and patrons of [public  
16 service] corporations.” (Emphasis added).<sup>18</sup>

17           • It may, by order, rule or regulation, “require every public service  
18 corporation to maintain and operate its line, plant, system, equipment, and  
19 premises *in a manner which will promote and safeguard the health and safety of*

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21           <sup>14</sup> *Id.*

22           <sup>15</sup> A-5 (prefiled Rejoinder Testimony of Mr. Broderick), pp. 1-2; Tr Vol 2, pp. 367-68 (Mr. Broderick).

23           <sup>16</sup> *Id.* 1,801 yes/1,256 no

24           <sup>17</sup> *Id.* at 2 1,565 yes/1,506 no; The efforts of the Task Force, the public forums and the survey indicate the  
25 community supports the Patron Safety Plan. Youngtown respectfully asks the Commission take a leadership  
role on fire flow in order to protect the public safety of the patrons of AAW. Tr Vol 2, p.286 (Mayor  
LeVault).

<sup>18</sup> Ariz. Const. Article 15, Section 3

1        *its employees, passengers, customers and the public,”* and to “prescribe the  
2        installation, use, maintenance and operation of appropriate safety or other devices  
3        or appliances. . . , establish uniform or other standards of equipment, and require  
4        the performance of any other act *which health or safety requires.*” (Emphasis  
5        added).<sup>19</sup>

6                • “When . . . *the equipment, appliances, facilities or service* of any public  
7        service corporation, or the methods of manufacture, distribution, transmission,  
8        storage or supply employed by it, *are unjust, unreasonable, unsafe, improper,*  
9        *inadequate or insufficient,* the commission *shall* determine what is just,  
10       reasonable, *safe,* proper, *adequate* or *sufficient* and *shall* enforce its  
11       determination by order or regulation.” (Emphasis added).<sup>20</sup>

12               • “When . . . *additions or improvements to or changes in the existing*  
13       *plant* or physical properties of a public service corporation *ought reasonably to be*  
14       *made,* or that a new structure or structures should be erected, *to promote the*  
15       *security or convenience* of its employees or the public, the commission *shall*  
16       make and serve an order directing that such changes be made or such structure be  
17       erected in the manner and within the time specified in the order.” (Emphasis  
18       added).<sup>21</sup>

19               • “When . . . the rates, fares, tolls, rentals, charges or classifications, or  
20       any of them, demanded or collected by any public service corporation for any  
21       service, product or commodity, or in connection therewith, or that the rules,  
22       regulations, practices or contracts, *are unjust, discriminatory or preferential,*

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24       <sup>19</sup> A.R.S. § 40-336

25       <sup>20</sup> A.R.S. § 40-321(A)

<sup>21</sup> A.R.S. § 40-331(A)

1        *illegal or insufficient*, the Commission *shall* determine and prescribe them by  
2        order, as provided in this title [Title 40, A.R.S].” (Emphasis added).<sup>22</sup>

3                • The Commission has authority to “supervise and regulate every public  
4        service corporation in the state and do all things, whether specifically designated  
5        in this title or in addition thereto, necessary and convenient in the exercise of that  
6        power and jurisdiction.”<sup>23</sup>

7                The Legislature has also expressly mandated:

8                • “Every public service corporation *shall furnish and maintain such*  
9        *service, equipment and facilities as will promote the safety, health, comfort and*  
10        *convenience of its patrons, employees and the public, and as will be in all*  
11        *respects adequate, efficient and reasonable.*” (Emphasis added).<sup>24</sup>

12                • “A public service corporation shall not, as to rates, charges, service,  
13        facilities or in any other respect, make or grant any preference or advantage to any  
14        person or subject any person to any *prejudice or disadvantage.*” (Emphasis  
15        added).<sup>25</sup>

16                • “No public service corporation shall establish or maintain any  
17        *unreasonable difference* as to rates, charges, *service, facilities* or in any other  
18        respect, either between localities or between classes of service.” (Emphasis  
19        added).<sup>26</sup>

20                The foregoing authority inevitably leads to the following conclusions. First, the  
21        Commission’s regulatory powers are not limited to making orders respecting the health and

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23        <sup>22</sup> A.R.S § 40-203

24        <sup>23</sup> A.R.S. § 40-202(a)

25        <sup>24</sup> A.R.S. §40-361(B)

26        <sup>25</sup> A.R.S. §40-334(A)

<sup>26</sup> A.R.S. §40-334(B)

1 safety, but also include the power to make orders respecting comfort, convenience, adequacy  
2 and reasonableness of service.<sup>27</sup> Second, the Commission may regulate public service  
3 corporations by adopting rules and regulations of general applicability and through orders  
4 pertaining to particular situations or particular public service corporations.<sup>28</sup> Third, the  
5 legislature mandates that the Commission take action when needed to provide public safety,  
6 even though it grants the Commission discretion in other areas. Fourth, the legislature also  
7 requires public service corporations furnish and maintain service, equipment and facilities that  
8 will: a) promote the safety, health, comfort and convenience of its patrons, employees and the  
9 public; b) be in all respects adequate, efficient and reasonable; c) not prejudice or  
10 disadvantage any person; and d) not maintain an unreasonable difference between localities or  
11 classes of service.

12 AAW's failure to provide sufficient fire flows and fire hydrants throughout the  
13 District violates A.R.S. §§ 40-361(B) and -334(A) & (B),<sup>29</sup> which places an affirmative duty  
14 on the Commission to act to protect the public safety and halt the disparate treatment of  
15 District customers pursuant to A.R.S. §§ 40-321(A), -331(A) and -203.<sup>30</sup> The Commission

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17 <sup>27</sup> *Ariz. Corp. Com'n v. Palm Springs Utility Co., Inc.*, 24 Ariz. App. 124, 536 P.2d 245 (1975) (upholding a  
18 Commission decision ordering the water company to meet water quality standards above the mandatory limits  
19 established by the State Health Department and reversing the superior court's determination that such decision  
20 was invalid in the absence of general rules and regulations on the topic).

21 <sup>28</sup> *Id.*

22 <sup>29</sup> In this particular case, (a) customers within portions of AAW's Sun City Water District are disadvantaged  
23 due to an unreasonable difference in fire flow and hydrants available to them versus other customers; (b)  
24 customers are paying the same rates and are entitled to the same level of service; (c) the level of service does  
25 not meet the minimum fire flow and fire spacing levels established by the IFC (and thus the State Fire Code);  
and (d) the existing condition constitutes a threat to the health, safety, convenience and comfort to AAW's  
patrons and the public.

<sup>30</sup> Suggestions by RUCO and AAW that the improvements are "discretionary" ignore these specific facts, the  
foregoing statutory obligations of the Commission and the fact that potable water systems today are intended to  
serve the dual purpose of serving potable water and providing water for fire protection. Current standards  
governing construction of potable water systems, such as the State Fire Code, Bulletin 10 of the Department of  
Environmental Quality, ACC regulation A.A.C. R14-2-407(F), all mandate water systems be designed to  
provide minimum fire flows while still maintaining 20 PSIG at the meter.



1 need not order the fire flow improvements. It can satisfy its statutory obligations by  
2 authorizing AAW to proceed with the Patron Safety Plan and approving the FCRM, a course  
3 of action supported by all parties, except RUCO.

4 **V. RUCO'S POSITION IS ILLCONCEIVED, IGNORES THE VITAL**  
5 **ROLE OF WATER SYSTEMS IN FIRE PREVENTION, IS NOT**  
6 **VIABLE AND LEAVES DISTRICT CUSTOMERS AND THE**  
7 **PUBLIC WITH INADEQUATE, UNSAFE, AND UNEQUAL**  
8 **SERVICE**

9 **A. Provision Of Equal Fire Flow Within The District Is NOT**  
10 **Discretionary**

11 Citing the absence of a specific Commission rule mandating minimum fire  
12 flows, RUCO opposes any expenditure of customer dollars on the Patron Safety Plan or any  
13 other facilities designed to provide fire protection. RUCO's position is fundamentally flawed  
14 and must be summarily rejected.<sup>31</sup>

15 First, RUCO ignores the Arizona Constitution's express recognition that  
16 providing water for fire prevention is a public purpose. Therefore, AAW is entitled to receive  
17 reasonable rates and charges that provide a reasonable return on the fair value of its  
18 investment in facilities to provide potable water service and for fire prevention purposes.<sup>32</sup>

19 Second, RUCO's position ignores the reality that fire flow and fire hydrants are  
20 all part of creating a water company today.<sup>33</sup> In fact, the District's existing system is already  
21 designed to provide water for both fire protection and to meet potable needs. Facilities  
22 serving fire prevention are already included in rate base and customer rates. The  
23 improvements proposed under the Patron Safety Plan will eliminate the inequality in fire

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24 <sup>31</sup> Ms. Diaz-Cortez could not explain why RUCO opposes the Patron Safety Plan while supporting  
25 discretionary low-income programs. Tr Vol 4, pp. 641-42.

<sup>32</sup> See generally, Ariz. Const. Art. 15, §3; *Simms v. Round Valley Light & Power Co.*, 80 Ariz. 145, 294 P.2d 378 (1956).

<sup>33</sup> Tr Vol 1, pp. 130-33, 168 (Mr. Gross).

1 prevention service currently being provided, promote the public safety and improve the  
2 reliability of potable service.

3 Third, as explained above, the legislature requires all public service corporations  
4 to furnish and maintain service, equipment and facilities that provide for the public safety.<sup>34</sup>  
5 The Office of the State Fire Marshal has adopted the IFC (2003 Edition) as the State Fire  
6 Code.<sup>35</sup> The State Fire Code expressly incorporates Appendix B, which establishes the same  
7 minimum fire flow requirements for the State the Task Force adopted for the District.<sup>36</sup>

8 Finally, the Commission by rule<sup>37</sup> requires "each utility to construct all facilities  
9 in accordance with the guidelines established by the state Department of Health Services;"  
10 which in turn requires public water system be designed "using good engineering practices;"<sup>38</sup>  
11 which in turn incorporates the criteria contained in Engineering Bulletin No. 10, 'Guidelines  
12 for the Construction of Water Systems' (May 1978); which not only clarifies that the 20 PSIG  
13 requirement applies "under all conditions of flow" (such as when fighting a fire), but also  
14 incorporates the fire flow design standards established by the Office of the State Fire Marshal  
15 or local authorities, as applicable.<sup>39</sup>

16 Therefore, the fire flow and fire hydrant requirements set forth in the foregoing  
17 regulations represent the minimum levels deemed necessary to provide for the public's health  
18 and safety.

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21 <sup>34</sup> A.R.S. §40-361(A)

22 <sup>35</sup> A.A.C. R4-36-201

23 <sup>36</sup> *Id.*

24 <sup>37</sup> A.A.C. R14-2-407(F); S-1. These Department of Health Services functions have been transferred to the  
Arizona Department of Environmental Quality.

25 <sup>38</sup> A.A.C. R18-4-502; S-10

<sup>39</sup> S-4

1 RUCO asks the Commission to ignore the prejudice, disadvantage and unequal  
2 treatment currently existing among District customers.<sup>40</sup> A “public service corporation is  
3 under a legal obligation to render adequate service impartially and without discrimination to  
4 all members of the general public to whom its scope of operation extends.”<sup>41</sup> Once a utility  
5 holds itself out as offering fire prevention service, it has the duty of giving each person or  
6 property owner such reasonable protection as others within a similar area are afforded.<sup>42</sup> The  
7 Commission has an affirmative obligation to enter an order rectifying this inequality and to  
8 promote public safety.<sup>43</sup>

9 A Commission order accepting the recommendations of the Task Force and  
10 approving the FCRM enables both AAW and the Commission to comply with their respective  
11 duties under the statutory scheme.<sup>44</sup>

12 B. Alternative Funding Sources Are Irrelevant; RUCO Has Failed To  
13 Identify Any Viable Alternative Funding Source

14 RUCO contends that funding for the Patron Safety Plan should come from  
15 Youngtown and non-profit associations rather than AAW customers. The suggestion is pure  
16 speculation, ignoring the benefits to the customers derived from the improvements. Notably,  
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18 <sup>40</sup> In this particular case, (a) customers within portions of AAW’s Sun City Water District are disadvantaged  
19 due to an unreasonable difference in fire flow and hydrants available to them versus other customers; (b)  
20 customers are paying the same rates and are entitled to the same level of service; (c) the level of service does  
21 not meet the minimum fire flow and fire spacing levels established by the IFC (and thus the State Fire Code);  
22 and (d) the existing conditions constitute a threat to the health, safety, convenience and comfort to AAW’s  
23 patrons and the public.

21 <sup>41</sup> *Veach v. City of Phoenix*, 102 Ariz. 195, 196, 427 P.2d 335, 336 (1967) citing *Town of Wickenburg v. Town*  
22 *of Sabin*, 68 Ariz. 75, 200 P.2d 342; 4 McQuillin Municipal Corporations, 2d Ed., s 1829. In *Veach* the  
23 Arizona Supreme Court held that if the City of Phoenix had assumed the responsibility of furnishing fire  
protection, then it has the duty of giving each person or property owner such reasonable protection as others  
within a similar area within the municipality are accorded under like circumstances.

24 <sup>42</sup> *Id.*

25 <sup>43</sup> A.R.S. §§40-203, -321(A) and -331(A).

<sup>44</sup> See also, *Palm Springs*, *supra*, holding that the Commission need not mandate conditions of service by rule,  
but may establish them by order based upon the specific facts presented.

1 RUCO presents no affirmative evidence supporting its *conjecture* that alternative funding  
2 exists. AAW, Staff and Youngtown have no obligation to disprove a hypothetical without  
3 any support in the record.

4 It is unreasonable to require an alternative source of funding where the Patron  
5 Safety Plan will benefit customers throughout the District.<sup>45</sup> Mr. Bradley Cole testified that  
6 the Plan will improve system reliability beyond the areas where the fire flow improvements  
7 will be installed.<sup>46</sup> Mr. Cole further testified that 6,203 customers in Sun City Phase 1 will  
8 benefit from the Plan and 2,333 customers in Youngtown will benefit from the Plan.<sup>47</sup>

9 The Commission regularly includes fire hydrants and other plant associated with  
10 meeting fire flow requirements in rate base.<sup>48</sup> No party made any adjustment (other than  
11 depreciation) to remove hydrants or any other fire flow related plant currently serving District  
12 customers.<sup>49</sup>

13 As in the Paradise Valley case, RUCO suggests that the Town (the local  
14 municipality) fund the fire flow improvements to AAW's system within the Town. As to  
15 areas outside the Town, RUCO suggests the Recreation Centers of Sun City, the Sun City  
16 Homeowners Association and/or the Condominium Owners Association, Inc. could assess  
17 their members to secure funding. RUCO has presented no evidence that any of these entities  
18 are legally and financially capable of raising such funds and then provide them to AAW to  
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20 <sup>45</sup> Tr Vol 2, pp. 332 (Mr. Cole)

21 <sup>46</sup> Tr Vol 2, pp. 335 (Mr. Cole); 377 (Mr. Broderick)

22 <sup>47</sup> Tr Vol 3, pp. 563 (Mr. Cole)

23 <sup>48</sup> In Docket No. W-01303A-05-0910 Staff stated that it is unaware of any previous Commission Decision  
24 where a water company's request for recovery of its investment in fire flow improvements had been denied and  
25 cited the Commission's requirement that AAW form the Sun City Fire Flow Task Force as recognition that fire  
flow is an important public safety issue that must be addressed. Decision No. 68858 at 10. Tr Vol 4, p. 641  
(Ms. Diaz-Cortez); TJC-15 of A-7 (prefiled Surrebuttal of Mr. Coley) (over \$2,000,000 in fire hydrant plant  
booked).

<sup>49</sup> Tr Vol 2, pp. 375-76 (Mr. Broderick); Tr Vol 4, pp. 637 -38 (Ms. Diaz-Cortez)

1 improve AAW's water system. Mayor LeVault testified that Youngtown is precluded by  
2 constitutional restrictions<sup>50</sup> and its own lack of financial resources from providing funding for  
3 the project.<sup>51</sup>

4 RUCO also argues that these improvements should be funded through  
5 contributions or advances in-aid-of-construction. This argument did not prevail when raised  
6 in the Paradise Valley case. The Commission Staff correctly observed in the Paradise Valley  
7 case that main extension agreements are discretionary and that the Commission's practice has  
8 been to limit CIAC for new development.<sup>52</sup>

9 As in the Paradise Valley case, the Commission must not allow RUCO to  
10 sidetrack it with hypothetical funding sources. The issue presented in this case is whether the  
11 Patron Safety Plan promotes the safety, health, comfort and convenience of AAW's patrons,  
12 employees and the public. The answer is an unequivocal yes. Once the investment in plant is  
13 made and the plant is placed in service, AAW is entitled to receive a return that considers that  
14 investment.<sup>53</sup>

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20 <sup>50</sup> See, Ariz. Const. Art 9, §§7 and 10.

21 <sup>51</sup> Tr Vol 2, pp. 279, 281-83. Relying on any of the entities suggested by RUCO as a funding source precludes  
22 the Commission from carrying out its statutory obligations as the Commission has no jurisdiction over any of  
these entities and could not compel them to provide the funding or upgrade service.

23 <sup>52</sup> Decision No. 68858 at p. 10. It should also be noted that AIAC and CIAC can only be required from "an  
24 applicant for the extension of mains" and then only up to the cost of the facilities necessary to render service to  
the applicant's property. No main extension is being requested. The level of service provided by AAW is  
25 unequal and inadequate under present fire flow requirements. The health and safety of the AAW's patrons are  
threatened. The legislature has placed the responsibility on public service corporations, not municipalities, to  
furnish and maintain such facilities as will be in all respects adequate, efficient and reasonable.

<sup>53</sup> Ariz. Const., Art. 15, §3; *Simms, supra*; *Palm Springs, supra*.

1                   **VI.     THE TOWN SUPPORTS THE FCRM**

2                   Youngtown finds the FCRM, as modified by Staff, to be a fair and reasonable  
3 method of cost recovery in this instance.<sup>54</sup> The uncontroverted evidence shows that  
4 improvements will enhance the health, safety and convenience of ratepayers and the public.<sup>55</sup>  
5 No viable source of funding, other than from water customers, for the fire flow improvements  
6 has been identified and the Town knows of none. Traditional ratemaking treatment does not  
7 appear viable. AAW's financial condition, at best, is likely to extend the time for making the  
8 needed fire flow improvements.<sup>56</sup> Delays are unnecessarily subjecting patrons and the public  
9 to increased fire danger, and will result in an overall increase in project costs, both from  
10 increased construction costs<sup>57</sup> and from the carrying costs associated with delayed ratemaking  
11 treatment.<sup>58</sup>

12                   The Town also believes that integrating the costs of the public safety  
13 improvements into rates annually over a four year period through the FCRM, minimizes the  
14 impact on AAW's customers,<sup>59</sup> many of whom, including residents of Youngtown, live on  
15 fixed incomes. The Four Year Patron Safety Plan has a similar amount of construction each  
16 year and therefore the level of increase will be similar. The fire flow improvements will not  
17 generate any additional revenues and will have no, or only minimal, impact on operating  
18 costs. Therefore, there should be no appreciable impact on the overall rate of return of AAW  
19 as a result of these improvements.

20  
21  
22                   <sup>54</sup> Tr Vol 2, pp. 285-286 (Mayor LeVault)

23                   <sup>55</sup> Footnote 2.

24                   <sup>56</sup> Tr Vol 2, p. 374 (Mr. Broderick)

25                   <sup>57</sup> Tr Vol 1, pp. 122-24 (Mr. Gross)

<sup>58</sup> Tr Vol 3, pp. 532-39 (Mr. Broderick)

<sup>59</sup> Tr Vol 3, pp. 539-40, 542 (Mr. Broderick)

1                   Based upon a total estimated cost of the Patron Safety Plan of \$5,118,000, AAW  
2 projects the cumulative impact of each step of the FCRM on monthly bills as follows:

	Phase 1	Phase 2	Phase 3	Phase 4
3           Median	0.22	0.46	0.71	1.01
4           Average	0.29	0.58	0.90	1.29

5  
6                   Based on a total estimated cost of the Patron Safety Plan of \$2,688,643, Staff  
7 projects the cumulative impact of each step of the FCRM on monthly bills as follows:

	Phase 1	Phase 2	Phase 3	Phase 4
8           Median	0.09	0.23	0.35	0.52
9           Average	0.12	0.29	0.45	0.67

10  
11                  The safety benefits achieved by implementing the Task Force's Patron Safety  
12 Plan clearly outweigh these modest impacts on monthly bills.

13                  The Town believes recovering costs through traditional ratemaking treatment  
14 will result in unreasonable delays (due to AAW's strained financial conditions) and undue  
15 increases in costs (due to rate case costs and deferral costs). Awaiting traditional ratemaking  
16 forecloses the opportunity to gradually phase-in the associated costs over a four year period  
17 and unnecessarily couples the impact of the fire flow improvements with whatever additional  
18 rate increase may be warranted at that time due to increased costs of capital and operations.

19                  The FCRM provides Staff and the Commission an opportunity to focus on the  
20 costs associated with the Patron Safety Plan. AAW will be required to demonstrate that all  
21 costs are reasonable and prudent before inclusion in the FCRM, just like in a rate case. An  
22 earnings test will protect customers from AAW over-earning through the FCRM. No rates  
23 will go into effect until the Commission has approved the increase. The Commission will have  
24 an opportunity to make any adjustments in the next full rate case.  
25

1           The Commission could require AAW to file a full rate case on the District as a  
2 pre-condition to filing for a fourth increase under the FCRM. This will allow the Commission  
3 an opportunity to determine whether the final increase should proceed under the FCRM or as  
4 part of the rate filing.

## 5           **VII. CONCLUSION**

6           Youngtown thanks the Commission for its interest and leadership role in this  
7 matter of patron and public safety. Youngtown also thanks the Task Force and AAW for their  
8 efforts to represent the diverse interests within the District, funding the modeling efforts of  
9 Brown & Caldwell, conducting public informational forums and committing to implement the  
10 Patron Safety Plan, provided the investment will be recognized by the Commission.

11           The Task Force adopted modest fire flow and fire hydrant requirements  
12 equivalent to the minimum standards recommended by the IFC. The Task Force study  
13 identified serious deficiencies in the fire protection capabilities of the District's existing water  
14 system and recommends a four year capital improvement plan to correct them. The Task  
15 Force recommended Four Year Patron Safety Plan properly balances the safety of the  
16 ratepayers and public with potential rate impacts. When completed, the Four Year Patron  
17 Safety Plan will have a modest impact on monthly bills (between \$0.67 and \$1.29 per month  
18 for the average customer and \$0.52 and \$1.01 for the median customer, depending on whether  
19 Staff or the Company's cost estimate is considered). The use of the FCRM minimizes the  
20 impact on ratepayers by implementing cost recovery over a four year period and in between  
21 anticipated rate cases.

22           The facts presented in this case establish the need for implementing both the  
23 construction program and the FCRM. Youngtown respectfully requests the Commission enter  
24 its decision and order adopting the Patron Safety Plan and approving the FCRM.  
25



1 DATED this 13<sup>th</sup> day of February, 2008.

2 CURTIS, GOODWIN, SULLIVAN,  
3 UDALL & SCHWAB, P.L.C.

4 By: 

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10 Attorneys for Town of Youngtown

1 **PROOF OF AND CERTIFICATE OF MAILING**

2 I hereby certify that on this 13<sup>th</sup> day of February, 2008, I caused the foregoing document  
3 to be served on the Arizona Corporation Commission by delivering the original and thirteen (13)  
4 copies of the above to:

5 Docket Control  
6 Arizona Corporation Commission  
7 1200 West Washington  
8 Phoenix, Arizona 85007

9 COPY of the foregoing hand delivered/mailed  
10 this 13<sup>th</sup> day of February, 2008 to:

11 Christopher Kempley, Chief Counsel  
12 Robin Mitchell, Counsel  
13 Legal Division  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, Arizona 85007

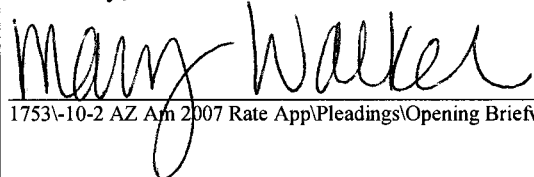
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18 Utilities Division  
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